mpt

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7060 of 2006

Suresh R. Mukane & ors. .. Petitioners

versus

State of Maharashtra & ors. .. Respondents

...

Mr.S.M. Oak with Sagar Joshi for the petitioner.

Mr.A.P. Vanarse, AGP for the State.

CORAM : D.G.KARNIK, J

DATED : 2nd November 2007

P.C.:

1. Heard learned counsel for the parties.

2. I am not inclined to interfere in exercise of writ jurisdiction for reasons more than one.

i) The impugned order is an interlocutory order and calls for no interference in exercise of writ jurisdiction.

ii) The petitioners who are the defendants in the suit made application for framing of a preliminary issue. By an order dated 5th July 2006,

that application was rejected. Order 14 Rule 1 of the Code of Civil Procedure prescribes that though the suit can be decided on a preliminary issue, the court shall record a finding on all issues. Thus, the primary rule is that the court must frame and decide all issues. Sub-rule (2) of Rule 2 of Order 14 creates an exception and permits a court to frame a preliminary issue. However, exercise of such power is discretionary. Such discretion is exercised ordinarily when no evidence would be required to be adduced for deciding a particular issue. In the present case the preliminary issue proposed would require adducing of evidence. It involves disputed questions of fact viz. whether the suit land belonged to a person belonging to a Scheduled Tribe. As evidence is required to be adduced for deciding that issue, the learned Judge was right in exercising his discretion refusing to frame preliminary issue.

3. No infirmity in the order can be found. Writ Petition is rejected summarily.

(D.G. KARNIK, J)